

## REMARKS

None of the claims have been amended. Claims 1-3 are currently pending. Reconsideration of the claims, and allowance of the pending claims are respectfully requested.

Claims 1-3 stand rejected under 35 USC 103(a) as being unpatentable over USP 6,493,304 to Watanabe ("Watanabe") in view of USP 4,497,049 to d'Arc ("d'Arc"). This rejection is respectfully traversed.

### Claim 1

Independent claim 1 recites determining whether the disk is upside down based on the obtained distribution curve.

The Examiner acknowledges that Watanabe fails to disclose the step of determining whether the disk is upside down based on the obtained distribution curve, but asserts that column 2, lines 20-25 of d'Arc discloses this limitation. However, Applicant respectfully submits that d'Arc does not disclose this limitation. Specifically, column 2, lines 20-25 state that:

"When the unrecorded face of the disc is placed opposite the laser beam 15 (FIG. 1B), the control circuit 17 cannot focus the laser beam for the detection of data and, therefore, cannot deliver a signal of the required level for processing data by the connected processor circuits and produces a no-data signal."

This language does not state that an upside-down disk is determined based on the obtained distribution curve. In fact, d'Arc is completely silent about any obtained distribution curve. Therefore, even if d'Arc can be combined with Watanabe (which Applicant disputes), this proposed combination would still not yield all the limitations of original claim 1.

### Claim 2

Claim 2 recites the step of comparing the obtained distribution curve with a prescribed reference reflection intensity distribution curve to determine whether the disk is upside down. The Examiner had rejected claim 2 based on the allegation that column 15, lines 44-47 of Watanabe discloses this limitation. Specifically, column 15, lines 44-47 of Watanabe state that:

"If no disk has been loaded, no signal is generated (at step S16), it is determined that there is "NO DISK" and the laser light is turned off, and a condition of waiting for disk loading is reached (at step S17)."

According to the Examiner, the "No Disk" state is seen to be equivalent to the disk being upside down.

The Examiner's position with respect to the limitations of claim 2 contains two serious flaws:

1. It assumes that the "No Disk" state is equivalent to the disk being upside down. However, an upside-down disk is clearly different from "no disk", and the fact that this assumption is being made clearly shows that impermissible hindsight reconstruction is at work.
2. Even if the assumption that the "No Disk" state is equivalent to the disk being upside down is appropriate (which Applicant disputes), column 15, lines 44-47 of Watanabe clearly do not disclose the step of comparing the obtained distribution curve with a prescribed reference reflection intensity distribution curve to determine whether the disk is upside down. There is absolutely no disclosure or suggestion about any obtained distribution curve or any prescribed reference reflection intensity distribution curve, and certainly no disclosure about comparing the obtained distribution curve with a prescribed reference reflection intensity distribution curve to determine whether the disk is upside down.

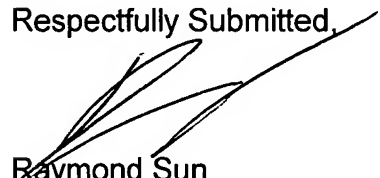
For the above reasons, claim 2 is submitted to be in condition for allowance. Even a combination of Watanabe and d'Arc will still be missing two limitations: (i) determining whether the disk is upside down based on the obtained distribution curve, and (ii) comparing the obtained distribution curve with a prescribed reference reflection intensity distribution curve to determine whether the disk is upside down, and will require an unsupported assumption (that the "No Disk" state is equivalent to the disk being upside down).

### Claim 3

Claim 3 depends from claim 1 and is submitted to be allowable for the same reasons.

In light of the above reasons, all pending claims are submitted to be in condition for allowance, and such action is respectfully solicited. The Examiner is encouraged to telephone the undersigned if the Examiner has any amendments that may place this application in condition for allowance.

Respectfully Submitted,



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I hereby certify that this paper is being deposited with the United States Postal service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Date: September 19, 2006

By:   
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